

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

UNITED STATES OF AMERICA	§	
v.	§	CRIMINAL No. 6:01CR39(10)
NICHOLAS RAY MCMORRIS	§	

REPORT & RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE

On December 15, 2005, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Nicholas Ray McMorris ("McMorris"). The government was represented by Bill Baldwin, Assistant United States Attorney for the Eastern District of Texas, and the defendant was represented by court appointed counsel, Jeff Haas.

Defendant originally plead guilty to possession with intent to distribute and distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1), a Class C felony. On May 16, 2002, U.S. District Judge John Hannah sentenced the defendant to 24 months in prison followed by 3 years supervised release, and on January 28, 2005, defendant completed his term of imprisonment and began a term of supervised release.

Under the conditions of supervised release, defendant was prohibited from committing any federal, state, or local crime, frequenting places where controlled substances are illegally sold, used, distributed, or administered, and was required to report as directed to his probation officer. On August 30, 2004, McMorris committed the offense of delivery of a substance in penalty group 1 (cocaine base) in an amount exceeding 1 gram, but less than 4 grams in

violation of Texas Health and Safety Code 481.112(c). The government also alleges defendant violated his conditions of supervised release by committing the offense of resisting arrest, search, or transport; by committing the offense of evading arrest; and by failing to report to the probation office as instructed on November 18, 2004. As the defendant was originally convicted of a Class C felony, if the court finds by a preponderance of the evidence that defendant violated a condition of his supervised release a sentence of no more than 2 years may be imposed. 18 U.S.C. § 3583(e)(3).

The federal sentencing guidelines prescribe ranges of imprisonment within the limits set forth in 18 U.S.C. § 3583(e)(3) based on the defendant's criminal history category and the severity of the violation. According to the guidelines, defendant carries a criminal history category of I and committed a Grade C violation by committing the offense of resisting arrest, search, or transport; by committing the offense of evading arrest; and by failing to report to the probation office as instructed on November 18, 2004. U.S.S.G. § 7B1.1(a)(3). Therefore, defendant is subject to a guideline range of 3 to 9 months if the court chooses to impose a term of imprisonment. U.S.S.G. § 7B1.4(a).

However, if the court finds that defendant violated the terms of supervised release by committing the offense of delivery of a substance in penalty group 1 (cocaine base) in an amount exceeding 1 gram, but less than 4 grams in violation of Texas Health and Safety Code 481.112(c), then the court must revoke the term of supervised release in favor of a term of imprisonment. U.S.S.G. § 7B1.1(a)(1). Furthermore, U.S.S.G. § 7B1.4(a) provides that the guideline range for this violation is 12 to 18 months.

Faced with the government's evidence, defendant plead True to violating a condition

of release by committing the offense of delivery of cocaine base in violation of Texas Health and Safety Code 481.112(c). The government recommended the Court impose a term of imprisonment of 12 months and one day with no supervised release to follow, and the defendant had no objection to the government's recommendation.

The Court finds that the defendant's plea was made freely and voluntarily and that the defendant is competent to enter this plea. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the defendant, Nicholas Ray McMorris, be committed to the custody of the Bureau of Prisons for a term of imprisonment of 12 months and one day with no supervised release to follow.

**SIGNED** this 19 day of **December, 2005**.

  
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HARRY W. McKEE  
UNITED STATES MAGISTRATE JUDGE